



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[WC Docket No. 17-84; FCC 17-154]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, a Further Notice of Proposed Rulemaking (FNPRM) seeks comment on a number of actions aimed at removing unnecessary regulatory barriers to the deployment of high-speed broadband networks. The FNPRM seeks comment on pole attachment reforms, changes to the copper retirement and other network change notification processes, and changes to the section 214(a) discontinuance application process. The Commission adopted the FNPRM in conjunction with a Report and Order and Declaratory Ruling in WC Docket No. 17-84.

DATES: Comments are due on or before **January 17, 2018**, and reply comments are due on or before **February 16, 2018**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by WC Docket No. 17-84, by any of the following methods:

- Federal Communications Commission's Web Site: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- Mail: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov and to Nicole Ongele, Federal Communications Commission, via e-mail to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Michele Berlove, at (202) 418-1477, michele.berlove@fcc.gov, or Michael Ray, at (202) 418-0357, michael.ray@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 17-84, adopted November 16, 2017 and released November 29, 2017. The full text of this document is available for public inspection during regular

business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at

https://apps.fcc.gov/edocs_public/Query.do?numberFld=17-

[154&numberFld2=&docket=&dateFld=&docTitleDesc=.](https://apps.fcc.gov/edocs_public/Query.do?numberFld=17-154&numberFld2=&docket=&dateFld=&docTitleDesc=)

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this

document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998),

<http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf>.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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Synopsis

I. INTRODUCTION

1. Access to high-speed broadband is an essential component of modern life, providing unfettered access to information and entertainment, an open channel of communication to far-away friends and relatives, and unprecedented economic opportunity. Technological innovation and private investment have revolutionized American communications networks in recent years, making possible new and better service offerings, and bringing the promise of the digital revolution to more Americans than ever before. As part of this transformation, consumers are increasingly moving away from traditional telephone services provided over copper wires and towards next-generation technologies using a variety of transmission means, including copper, fiber, and wireless spectrum-based services.

2. Despite this progress, too many communities remain on the wrong side of the digital divide, unable to take full part in the benefits of the modern information economy. To close that digital divide, we seek to use every tool available to us to accelerate the deployment of advanced communications networks. Accordingly, today we embrace the transition to next-generation networks and the innovative services they enable, and adopt a number of important reforms aimed at removing unnecessary regulatory barriers to the deployment of high-speed broadband networks.

3. By removing unnecessary impediments to broadband deployment, the regulatory reforms we adopt today will enable carriers to more rapidly shift resources away from maintaining outdated legacy infrastructure and services and towards the construction of next-generation broadband networks bringing innovative new broadband services. And by reducing the costs to deploy high-speed broadband networks, we make it more economically feasible for carriers to extend the reach of their networks, increasing competition among broadband providers to communities across the country. We expect competition will include such benefits as lower prices to consumers. We anticipate taking additional

action in the future in this proceeding to further facilitate broadband deployment.

A. Expediting Applications That Grandfather Additional Data Services for Existing Customers

4. We propose to streamline the approval process for applications seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area. We acknowledge that data services subject to section 214 discontinuance authority typically have symmetrical upload and download speeds. Proposing non-symmetrical speed thresholds for streamlining purposes, however, provides maximum flexibility for carriers to the extent legacy data services having non-symmetrical download and upload speeds are subject to our discontinuance rules. We currently use 25 Mbps/3 Mbps as the speed benchmark for evaluating deployment of fixed advanced telecommunications capability, meaning a service that “enables users to originate and receive high quality voice, data, graphics, and video telecommunications” under section 706 of the Telecommunications Act of 1996. As such, we think that comparatively lower speed services are ripe for streamlined treatment when higher speed services are available. In the *Wireline Infrastructure* notice of proposed rulemaking, the Commission proposed to apply any streamlined discontinuance process to grandfathered low-speed legacy services below 1.544 Mbps, but sought comment on whether we should make streamlined processing available for applications to grandfather services at higher speeds, such as TDM services below 10Mbps or 25 Mbps. We seek comment on this proposal.

5. We propose a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers submitting such applications. Under this proposal, such services must be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. Through these proposed reforms, we seek to provide carriers with incentives to develop and deploy higher quality services operating at higher speeds. We seek comment on this proposal. We also seek comment on possible alternatives, including different speed thresholds and different time intervals.

6. Will streamlining the approval process for this class of applications promote competition in the market for higher-speed data services? Will it help speed the ongoing technology transition to next-generation IP-based services and networks, and encourage the deployment of better quality, higher-speed services? What are this proposal's benefits and costs?

7. Additionally, we seek comment on whether applications to discontinue these higher-speed data services after they have been grandfathered for a period of at least 180 days should be granted the same streamlined comment and auto-grant periods that we have adopted for previously grandfathered legacy data services in the above Order. Should applications to discontinue higher-speed already-grandfathered services be subject to a 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application?

B. Utility Treatment of Overlapping

8. For decades, the Commission has maintained a policy of encouraging the use of overlapping to maximize the useable space on utility poles. In 1995, the Commission “noted the serious anti-competitive effects of preventing cable operators from adding fiber to their systems by overlapping” and “affirmed its commitment to ensure that the growth and development of cable system facilities are not hindered by an unreasonable denial of overlapping by a utility pole owner.” In 1998, the Commission reaffirmed that overlapping “facilitates and expedites installing infrastructure,” “promotes competition,” and “is an important element in promoting . . . diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace.” It further noted that “any concerns [with overlapping] should be satisfied by compliance with generally accepted engineering practices.” In 2001, the Commission again reaffirmed that overlapping “reduces construction disruption and associated expenses which would otherwise be incurred by third parties installing new poles and separate attachments” and reaffirmed its holding that “neither the host attaching entity nor the third party overlayer must obtain additional approval from or consent of the utility for overlapping other than the approval obtained for the host attachment.” The

Commission's holdings on overloading were upheld by the D.C. Circuit and remain in effect today.

9. Nonetheless, some parties have claimed that not all utilities are complying with these holdings. ACA states that "some utilities require, or seek to require, additional prior approvals for overloading projects." Others have asked for the agency to make clear that "an attacher shall not be required to obtain approval from or provide advance notice to a pole owner before overloading additional wires, cables, or equipment to its own facilities. The attacher shall inform the pole owner of the location and type of any facilities that have been overloaded."

10. We seek comment on codifying our longstanding precedent regarding overloading. Specifically, we seek comment on codifying a rule that overloading is subject to a notice-and-attach process and that any concerns with overloading should be satisfied by compliance with generally accepted engineering practices. Although one commenter asserts that "overloading must be subject to utility review through the applications process" because of potential safety concerns and another asserts that "Each Utility Needs to Retain the Right to Determine What Level of Review is Required," neither offers a reason for us to disturb our long-held precedent and we see no reason to reopen that precedent here. Would codifying such a rule make clear the rights of overloaders? Would doing so reduce any confusion that may delay attachers from deploying next-generation services to unserved communities? Would codifying such a rule be consistent with our long-held view that overloading has substantial competitive effects, ultimately leading to greater deployment and lower prices for consumers?

C. Calculation of Waiting Period Under Section 51.333(B)

11. AT&T proposes that we revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice. We seek comment on this proposal. Section 51.333(b) of the Commission's rules provides that the network change referenced in a short-term notice "shall be deemed final on the tenth business day after the release of the Commission's public notice." According to AT&T, tying the effective date to release of the Commission's public notice is unnecessary because incumbent LECs are required to provide direct notice

to interconnecting carriers. Is AT&T correct? We seek comment on the benefits and burdens of revising the rule as AT&T suggests.

12. In connection with copper retirement notices, we found in the Order above that “having the waiting period run from the date we release a public notice of the filing, as has been the case for more than two decades, affords Commission staff the necessary opportunity to review filings for mistakes and/or non-compliance with the rules.” Are circumstances different for short-term network change notices than for copper retirement notices? Is there any reason Commission staff might not need the opportunity to review short-term network change notices for accuracy or completeness before the waiting period under the rule should begin to run? Are there other benefits associated with having the waiting period run from the time the Commission releases its public notice rather than from the date the incumbent LEC files its notice or certification with the Commission? Will altering the calculation of the waiting period in such a way help speed the ongoing technology transition to next-generation IP-based services and networks? Are there other advantages or disadvantages to calculating the waiting period in this manner? How would calculating the waiting period in this manner affect the deadline for objecting to a network change disclosure? Are there other issues we should consider in conjunction with considering this proposal?

D. Public Notice of Network Changes Affecting Interoperability of Customer Premises Equipment

13. AT&T also proposes that we eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. We seek comment on this proposal. Section 51.325(a)(3) requires that incumbent LECs provide notice pursuant to the Commission’s network change disclosure rules of any changes to their networks that “will affect the manner in which customer premises equipment is attached to the interstate network.” AT&T asserts that this rule is no longer necessary because incumbent LECs “do not have a significant presence in the market for manufacturing CPE . . . CPE manufacturers move at lightning speed to adapt to new technologies,” and “incumbent LECs no longer “possess the market power that would enable them to

adversely affect the CPE marketplace.” We seek comment on the benefits and costs of the current rule and whether the benefits outweigh the costs. Does section 51.325(a)(3) continue to afford relevant protections in the current marketplace? How frequently do incumbent LECs provide public notice of such network changes? Do interconnecting carriers rely on public notice of such network changes? Will eliminating the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment help speed the ongoing technology transition to next-generation IP-based services and networks?

14. We seek comment on the intersection of section 51.325(a)(3) with other rules and how that intersection should influence our approach here. In the *Notice*, the Commission sought comment on eliminating section 68.110(b), which requires that “[i]f . . . changes [to a wireline telecommunications provider’s communications facilities, equipment, operations or procedures] can be reasonably expected to render any customer’s terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service.” AT&T makes similar assertions in support of its arguments in favor of eliminating both sections 51.325(a)(3) and 68.110(b). Unlike section 51.325(a)(3), which applies only to incumbent LECs, section 68.110(b) applies to all carriers. Do sections 51.325(a)(3) and 68.110(b) impose similar burdens on carriers or afford similar benefits to customers? Is there any reason to treat the two rules differently? Should we modify rather than eliminate or retain either section 51.325(a)(3) or 68.110(b)?

E. Applying Streamlined Notice Procedures for Force Majeure Events to All Network Changes

15. We seek comment on extending the streamlined notice procedures applicable to force majeure and other unforeseen events adopted in today’s Order for copper retirements to all types of network changes. The notice of proposed rulemaking sought comment on removing the copper retirement notice requirements in emergency situations. It did not, however, ask about removing the

notice requirements applicable to network changes other than copper retirements. We seek comment on whether the same benefits to be gained from the streamlined procedures adopted in the copper retirement context similarly apply to other types of network changes. The waiver orders discussed above are general in nature. We seek comment on whether all incumbent LECs should have the same access to the relief afforded by these waiver orders in all situations, not just when copper retirements are implicated.

F. Forbearance from Section 214(a) Discontinuance Requirements for Services with No Existing Customers

16. CenturyLink and AT&T propose that we forbear from applying the section 214(a) discontinuance requirements when carriers seek to discontinue, reduce, or impair services with no existing customers. We seek comment on this proposal and whether we should, on our own motion, grant this forbearance. We specifically seek comment on forbearing from section 214(a) and our part 63 implementing rules when carriers seek to discontinue, reduce, or impair services with no existing customers. We seek comment on whether such action would satisfy the criteria for granting forbearance. Is maintaining the requirement to obtain discontinuance authorization in such cases necessary to protect consumers or other stakeholders? Can enforcement of section 214(a)'s requirements be necessary for the protection of consumers when there are no affected customers? Is enforcement of these requirements where there are no affected customers necessary to ensure that the charges and practices of carriers are not unjustly or unreasonably discriminatory? Is forbearance from section 214(a)'s requirements in this context otherwise consistent with the public interest? We anticipate that because the services in question lack customers, applying the section 214(a) discontinuance requirement here is not necessary to ensure just charges or protect consumers, and we seek comment on this view. Is forbearance in this context consistent with the public interest? In this regard, will forbearing from applying section 214(a)'s discontinuance requirements in the context of services without existing customers help speed the ongoing technology transition to next-generation IP-based services and networks?

17. Alternatively, should we further streamline the discontinuance process for "no customer" applications, generally? In the Order, we substantially streamline the discontinuance process for "no

customer” applications for legacy voice and data services below 1.544 Mbps. Specifically, we reduce the auto-grant period from 31 days to 15 days and reduce the timeframe within which a carrier must not have had any customers or request for service from 180 days to 30 days. Should we adopt these same streamlined rules for all “no customer” discontinuance applications or some larger subset than just the legacy services below 1.544 Mbps that the record currently supports?

18. We note that under our current rules, there is no deadline for filing comments in response to an application to discontinue, reduce, or impair services with no existing customers. We seek comment on whether we should establish a set comment period for such applications in the unlikely event that any party may wish to comment on requests to discontinue, reduce, or impair services with no existing customers. How long should any such comment period be? Should we apply a uniform period of public comment to applications from both dominant and non-dominant carriers, or should each type of provider be subject to a different comment period?

G. Further Streamlining of the Section 214(a) Discontinuance Process for Legacy Voice Services

19. Several commenters propose that we further streamline the section 214(a) discontinuance process for legacy voice services. We seek comment on what further steps we can take to streamline the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon’s proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. As Verizon notes, this approach provides an alternative to forbearance from section 214(a) discontinuance requirements for legacy voice services. Verizon asserts that adoption of this streamlined test “would compel carriers to maintain legacy services only in those rare instances . . . where their absence would cut consumers off from the nation’s telephone network” and would “free[] carriers to focus on rolling out and improving the next-generation technologies their customers demand.”

20. We seek comment on the benefits and burdens of streamlining section 214(a) discontinuances for legacy voice services and on the benefits and burdens of Verizon's specific recommendation. Would such rule changes reduce unnecessary costs and burdens associated with the deployment of next-generation services and thereby spur broadband such deployment? Would such changes help speed the ongoing technology transition to next-generation IP-based services and networks?

21. As to Verizon's proposal, would the information sought under this kind of two-part test be sufficient to allow the Commission to certify that the "public convenience and necessity" would not be adversely affected by the proposed discontinuance, as section 214(a) requires? If not, what information should be required? If we were to adopt this approach, what would be the best means to implement this type of test? What type of showing would a carrier be required to make under each prong? Would a simple certification be sufficient, or should some other evidence of available alternatives be required? What types of voice services should be considered as sufficient alternatives to legacy TDM-based voice service that would satisfy the second prong? Are there specific characteristics that a voice service should be required to have in order to satisfy the second prong? Finally, we seek comment on any alternative approaches to streamlining the section 214(a) discontinuance process for legacy voice services.

22. Alternatively, Verizon requests that we forbear from applying section 214(a)'s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services. CenturyLink and WTA similarly request that we eliminate the requirement to file a section 214(a) application altogether for any discontinuance that is part of a network upgrade. We seek comment on these proposals and whether we should, on our own motion, grant forbearance when carriers upgrade their networks and simultaneously transition the services provided over those networks to next-generation technology, e.g., TDM to IP. We specifically seek comment on forbearing from both section 214(a)'s discontinuance requirements and our part 63 implementing rules. We seek comment on whether such action would satisfy the criteria for granting forbearance. Is enforcement of our discontinuance requirements under section 214(a) and part 63 of our implementing rules in cases where carriers seek to transition from legacy services to next-generation services not

necessary to ensure that the charges and practices of carriers are not unjustly or unreasonably discriminatory? Is enforcement of these discontinuance requirements necessary to ensure consumer protection during the ongoing technology transition to next-generation networks and services? Will forbearing from applying our discontinuance requirements under section 214(a) and part 63 of our implementing rules in this context be consistent with the public interest? Will forbearance in this context help speed the ongoing technology transition to next-generation IP-based services and networks? Is forbearance even necessary in light of the actions we take today in the Order to revise our section 214(a) discontinuance rules?

23. Verizon asserts that current market dynamics demonstrate that next-generation voice services are readily available, as evidenced by a decisive shift by consumers away from legacy voice services, and towards competing fiber, IP-based and wireless alternatives. In such a competitive environment, Verizon asserts that “freeing providers from Section 214(a) in this market will promote competition among those providers on the merits of their next-generation services” and that therefore “forbearance [from the section 214(a) discontinuance process] is in the public interest” where providers seek to replace legacy services with next-generation alternatives. We seek comment on these assertions and on the benefits and burdens associated with forbearing from section 214(a)’s discontinuance requirements when carriers seek to replace legacy voice services with next-generation services. How would forbearance from these rules affect competitive market conditions for telecommunications services? Would forbearance from our section 214(a) discontinuance requirements in circumstances where carriers seek to replace legacy voice services with next-generation alternatives better incentivize the deployment of high-speed broadband than the streamlining proposals discussed above? Why or why not?

H. Eliminating Outreach Requirements Adopted in the 2016 *Technology Transitions Order*

24. ITTA proposes that we eliminate the outreach requirements adopted in the 2016 *Technology Transitions Order*. We seek comment on this proposal. These requirements mandate that

carriers offer an adequate outreach plan when discontinuing legacy retail services. These requirements apply to transitioning wireline TDM-based voice service to a voice service using a different technology such as Internet Protocol (IP) or wireless. The requirements further specify that an adequate outreach plan must, at a minimum, involve: “(i) the development and dissemination of educational materials provided to all customers affected containing specific information pertinent to the transition, as specified in detail below; (ii) the creation of a telephone hotline and the option to create an additional interactive and accessible service to answer questions regarding the transition; and (iii) appropriate training of staff to field and answer consumer questions about the transition.” We seek comment on the benefits and burdens of these requirements.

25. ITTA asserts that these requirements are “unduly burdensome and prescriptive,” in addition to being unnecessary, because our preexisting discontinuance notice process already provides “affected customers and other stakeholders with adequate information of what is to occur and what steps they may need to take.” ITTA further asserts that regardless of any notice requirements maintained by the Commission, carriers “would continue to have incentives due to marketplace forces to communicate with customers in connection with technology transitions when customers are impacted by such changes.” We seek comment on ITTA’s assertions. Are the burdens imposed by these outreach requirements adopted in the *2016 Technology Transitions Order* unduly burdensome such that they should be eliminated or revised? Or do those requirements afford necessary protections to affected consumers of legacy services? Should we modify those requirements rather than retain or eliminate them, and if so how? Will eliminating or modifying these requirements help speed the ongoing technology transition to next-generation IP-based services and networks?

I. Rebuilding and Repairing Broadband Infrastructure After Natural Disasters

26. We are committed to helping communities rebuild damaged or destroyed communications infrastructure after a natural disaster as quickly as possible. We recognize the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria. We are concerned that unnecessarily burdensome

government regulation may hinder rather than help recovery efforts, and laws that are suited for the ordinary course may not be appropriate for disaster recovery situations. We seek comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

27. We emphasize that we appreciate the importance of working cooperatively with state and local authorities. How can we ensure that any preemptive action we take helps rather than inhibits state and local efforts? More generally, how can we best work with state and local regulators to get broadband infrastructure operational after a natural disaster? We seek comment on our legal authority to preempt state and local laws in this context, including our authority under sections 253 and 332(c)(7) of the Act and section 6409 of the Spectrum Act. If we should preempt certain state or local laws, should we do so by rule or by adjudication? Should we limit the scope of any preemption in this context only to periods in which a community is recovering from a natural disaster, and if so how should we delimit that timeframe?

II. INITIAL REGULATORY FLEXIBILITY ANALYSIS

28. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies on which the Commission seeks comment in this FNPRM of Proposed Rule Making (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 133 of this Notice. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

29. The FNPRM proposes to adopt streamlined treatment for all carriers seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area. It proposes to adopt a uniform reduced public comment

period of 10 days and an auto-grant period of 25 days, and require that such services be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. The FNPRM also seeks comment on whether applications to discontinue higher-speed grandfathered data services should be subject to a streamlined 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authorization to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. The FNPRM also seeks comment on the appropriate utility treatment of requests by attachers to: (1) overlash new wires and cables onto existing wires and cables already on a utility pole; or (2) connect service from an attacher's facilities on an existing utility pole directly to a customer location (also known as a drop). The FNPRM asks whether the Commission should codify or better explain its policies with regard to this type of pole work in order to spur broadband deployment. The FNPRM also seeks comment on a variety of recommendations for additional reforms to the Commission's network change disclosure rules and the section 214(a) discontinuance authorization process. First, the FNPRM seeks comment on a proposal to revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice. Second, the FNPRM seeks comment on a proposal to eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. Third, the FNPRM seeks comment on extending the streamlined notice procedures applicable to force majeure and other unforeseen events adopted in today's Order for copper retirements to all types of network changes. Fourth, the FNPRM seeks comment on whether we should forbear from requiring compliance with the discontinuance requirements of section 214(a) in all instances where a carrier seeks to discontinue, reduce, or impair services with no existing customers. Alternatively, the FNPRM seeks comment on whether we should further streamline the discontinuance process for all "no customer" applications, regardless of the speed of the services being discontinued. Fifth, the FNPRM seeks comment on ways to further streamline the section 214(a) discontinuance process for legacy voice

services. In particular, we seek comment on Verizon’s proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. We also seek comment on Verizon’s request that we forbear from applying section 214(a)’s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services. Sixth, the FNPRM seeks comment on whether we should eliminate the outreach requirements adopted by the Commission in the *2016 Technology Transitions Order*. Lastly, in light of the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria, we seek comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

B. Legal Basis

30. The proposed action is authorized under sections 1-4, 201, 202, 214, 224, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-54, 201, 202, 214, 224, 251, and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

31. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposals on which the FNPRM seeks comment, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

32. The majority of the proposals on which we seek comment in the FNPRM will affect obligations on incumbent LECs and, in some cases, competitive LECs, and telecommunications carriers.

Our actions, over time, may affect small entities that are not easily categorized at present. Other entities, however, that choose to object to network change notifications for copper retirement under the proposals on which we seek comment and section 214 discontinuance applications may be economically impacted by the proposals in this FNPRM.

33. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

34. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

35. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

36. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

37. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 36 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

38. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 36 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers

of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

39. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 36 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

40. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 36 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more

than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

41. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 36 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

42. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using

available data, we estimate that the majority of wireless firms can be considered small.

43. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

44. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

45. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: “This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.” The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

46. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.” This category includes electric power distribution, hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business. According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.

47. *Natural Gas Distribution.* This economic census category comprises: “(1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2)

establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.” The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees. According to Census Bureau data for 2012, there were 422 firms in this category that operated for the entire year. Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational. Thus, the majority of firms in this category can be considered small.

48. *Water Supply and Irrigation Systems.* This economic census category “comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses.” The SBA has developed a small business size standard for this industry, which is all such firms having \$27.5 million or less in annual receipts. According to Census Bureau data for 2012, there were 3,261 firms in this category that operated for the entire year. Of this total, 3,035 firms had annual sales of less than \$25 million. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

49. The FNPRM seeks comment on a number of proposals that would affect reporting, recordkeeping, and other compliance requirements. We would expect the proposals on which the FNPRM seeks comment to reduce reporting, recordkeeping, and other compliance requirements. The proposals taken as a whole would have a beneficial reporting, recordkeeping, or compliance impact on small entities because all carriers would be subject to fewer such burdens. Each of these changes is described below.

50. The FNPRM proposes to adopt a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers seeking to grandfather data services with download/upload

speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected service area. Under this proposal, such services must be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. We seek comment on these proposals, and on whether applications to discontinue these higher-speed data services after they have been grandfathered for a period of at least 180 days should be subject to a streamlined 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authorization to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. The FNPRM seeks comment on the appropriate regulatory treatment (if any) for pole work that is not subject to the standard Commission pole attachment timeline (e.g., overloading, drops), including whether to require prior written notice to utilities when attachers attempt such work.

51. The FNPRM also seeks comment on a variety of recommendations for additional reforms to the Commission's network change disclosure rules and the section 214(a) discontinuance authorization process. First, the FNPRM seeks comment on a proposal to revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice. Second, the FNPRM seeks comment on a proposal to eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. Third, the FNPRM seeks comment on extending the streamlined notice procedures applicable to force majeure and other unforeseen events adopted in today's Order for copper retirements to all types of network changes. Fourth, the FNPRM seeks comment on whether we should forbear from requiring compliance with the discontinuance requirements of section 214(a) in all instances where a carrier seeks to discontinue, reduce, or impair services with no existing customers. Alternatively, the FNPRM seeks comment on whether we should further streamline the discontinuance process for all "no customer" applications, regardless of the speed of the services being discontinued. Fifth, the FNPRM seeks

comment on ways to further streamline the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon's proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. We also seek comment on Verizon's request that we forbear from applying section 214(a)'s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services. Sixth, the FNPRM seeks comment on whether we should eliminate the outreach requirements adopted by the Commission in the *2016 Technology Transitions Order*. Lastly, in light of the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria, we seek comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

53. In the FNPRM, we propose to adopt a uniform reduced public comment period of 10 days and an auto-grant period of 25 days for all carriers seeking to grandfather data services with download/upload speeds of less than 25 Mbps/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25 Mbps/3 Mbps or higher throughout the affected

service area. Under this proposal, such services must be grandfathered for a period of no less than 180 days before a carrier may submit an application to the Commission seeking authorization to discontinue such services. We seek comment on these proposals, and on whether applications to discontinue these higher-speed data services after they have been grandfathered for a period of at least 180 days should be subject to a streamlined 10-day comment period and a 31-day auto-grant period upon inclusion of a certification that the carrier has received Commission authorization to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application.

54. In the FNPRM, we further seek comment on how best to treat pole work that is not subject to our standard required pole attachment timeline. While one of the proposals on which we seek comment would impose a notice burden on attachers before attempting such work, such a burden potentially could be offset by not requiring such work to be pre-approved by the utility pole owner or regulated pursuant to the Commission's standard pole attachment timeline.

55. In the FNPRM, we also seek comment on several proposals to reform the Commission's network change disclosure rules and the section 214(a) discontinuance authorization process. If adopted, many of these proposals would reduce the economic impact on small entities by significantly reducing the reporting, recordkeeping, and additional compliance burdens on such entities. To that end, the Commission seeks comment on proposals to (1) revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice or certification of the change rather than from the date the Commission releases its public notice, and (2) eliminate the requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. The FNPRM also seeks comment extending the streamlined notice procedures applicable to force majeure and other unforeseen events adopted in today's Order for copper retirements to all types of network changes. In addition, the FNPRM seeks comment on whether we should forbear from requiring compliance with the discontinuance requirements of section 214(a) in all instances where a carrier seeks to discontinue, reduce, or impair services with no existing customers. Alternatively, the FNPRM seeks comment on whether we should further streamline the

discontinuance process for all “no customer” applications, regardless of the speed of the services being discontinued. The FNPRM also seeks comment on ways to further streamline the section 214(a) discontinuance process for legacy voice services. In particular, we seek comment on Verizon’s proposal that the Commission streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. Alternatively, we seek comment on Verizon’s request that we forbear from applying section 214(a)’s discontinuance requirements to carriers seeking to transition from legacy voice services to next-generation replacement services. The FNPRM also seeks comment on whether the Commission should eliminate the outreach requirements adopted by the Commission in the *2016 Technology Transitions Order*. Lastly, in light of the important and complementary roles that local, state, and federal authorities play in facilitating swift recovery from disasters such as Hurricanes Harvey, Irma, and Maria, the FNPRM seeks comment on whether there are targeted circumstances in which we can and should use our authority to preempt state or local laws that inhibit restoration of communications infrastructure.

56. The Commission believes that the proposals upon which the FNPRM seeks comment will benefit all carriers, regardless of size. The proposals would further the goal of reducing regulatory burdens, thus facilitating investment in next-generation networks and promoting broadband deployment. We anticipate that a more modernized regulatory scheme will encourage carriers to invest in and deploy even more advanced technologies as they evolve. We also believe that preempting state or local laws that inhibit the restoration of communications infrastructure will help to facilitate swifter and more effective recoveries from natural disasters such as hurricanes.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

57. None.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act of 1995 Analysis

58. This document contains proposed modified information collection requirements. The

Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Initial Regulatory Flexibility Analysis

59. An initial regulatory flexibility analysis (IRFA) is contained in Appendix D of the Further Notice of Proposed Rulemaking. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Further Notice of Proposed Rulemaking. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Filing Instructions

60. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal

Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

61. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

D. Ex Parte Information

62. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the

memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

E. Contact Person

63. For further information about this proceeding, please contact Michele Levy Berlove, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C313, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-1477, Michele.Berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C235, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-0357, Michael.Ray@fcc.gov.

IV. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 201, 202, 214, 224, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201, 202, 214, 224, 251, and 303(r), the Further Notice of Proposed Rulemaking IS ADOPTED.

65. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 63

Extension of lines, new lines, and discontinuance, reduction, outage and impairment of service by common carriers; and Grants of recognized private operating agency status.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.
Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 63 as follows:

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority for part 63 continues to read as follows:

AUTHORITY: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

2. Section 63.71 is amended by adding paragraph (l) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(l) The following requirements are applicable to data service operating at download/upload speeds of less than 25 Mbps/3 Mbps in a service area in which the carrier provides alternative data services of equivalent quality at download/upload speeds of 25 Mbps/3 Mbps or higher:

(1) Notwithstanding paragraphs (a)(5)(i)-(ii) and (k)(1) of this section, if any carrier, dominant or non-dominant, seeks to grandfather data service operating at download/upload speeds of less than 25 Mbps/3 Mbps in a service area in which the carrier provides data services of equivalent quality at speeds of 25 Mbps/3 Mbps or higher, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number

established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(2) An application filed by any carrier seeking to grandfather data service operating at download/upload speeds of less than 25 Mbps/3 Mbps for existing customers in a service area in which the carrier provides data services of equivalent quality at speeds of 25 Mbps/3 Mbps or higher shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. Such service must be grandfathered for a minimum of 180 days before a carrier can file an application with the Commission to discontinue, reduce, or impair the previously grandfathered service.

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